

By: Jackson

S.B. No. 1475

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Texas Department of  
Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.001, Occupations Code, is amended to  
read as follows:

Sec. 51.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means a board, committee,  
council, or other entity with multiple members that has as its  
primary function advising the commission or department.

(2) "Commission" means the Texas Commission of  
Licensing and Regulation.

(3) [~~(2)~~] "Department" means the Texas Department of  
Licensing and Regulation.

(4) [~~(3)~~] "License" means a license, certificate,  
registration, title, or permit issued by the department.

(5) [~~(4)~~] "License holder" means a person who holds a  
license issued by the department.

(6) [~~(5)~~] "Respondent" means a person, regardless of  
whether the person is a license holder, who is charged with  
violating a law establishing a regulatory program administered by  
the department or a rule adopted or order issued by the commission  
or executive director.

(7) [~~(6)~~] "Sanction" means an action by the executive

1 director against a license holder or another person, including the  
2 denial, suspension, or revocation of a license, the reprimand of a  
3 license holder, or the placement of a license holder on probation.

4 SECTION 2. Subsection (a), Section 51.202, Occupations  
5 Code, is amended to read as follows:

6 (a) The commission shall set fees, in amounts reasonable and  
7 necessary to cover the costs of administering the programs or  
8 activities, for:

- 9 (1) licenses issued by the department;  
10 (2) license renewals and late renewals;  
11 (3) examinations; ~~and~~  
12 (4) continuing education; and  
13 (5) any other program or activity administered by the  
14 department for which a fee is authorized.

15 SECTION 3. Subchapter D, Chapter 51, Occupations Code, is  
16 amended by adding Sections 51.209, 51.210, and 51.211 to read as  
17 follows:

18 Sec. 51.209. APPOINTMENT OF ADVISORY BOARD MEMBERS.

19 (a) Except as otherwise provided by law, the presiding officer of  
20 the commission, with the commission's approval, shall:

- 21 (1) appoint the members of the advisory board; and  
22 (2) appoint a member of the advisory board to serve as  
23 presiding officer of the advisory board.

24 (b) An advisory board member shall serve without  
25 compensation but is entitled to reimbursement for actual and  
26 necessary expenses incurred in performing advisory board  
27 functions, subject to the General Appropriations Act.

1       Sec. 51.210. REMOVAL OF ADVISORY BOARD MEMBER. (a) An  
2 advisory board member who was appointed by the presiding officer of  
3 the commission with the commission's approval may be removed from  
4 the advisory board by the presiding officer of the commission with  
5 the commission's approval on the grounds that the member:

6           (1) does not have at the time of taking office the  
7 qualifications required by the law or rule authorizing appointment  
8 of the member;

9           (2) does not maintain during service on the advisory  
10 board the qualifications required by the law or rule authorizing  
11 appointment of the member;

12           (3) cannot, because of illness or disability,  
13 discharge the member's duties for a substantial part of the member's  
14 term; or

15           (4) is absent from more than half of the regularly  
16 scheduled advisory board meetings that the member is eligible to  
17 attend during a calendar year without an excuse approved by a  
18 majority vote of the advisory board.

19       (b) The validity of an action of an advisory board is not  
20 affected by the fact that it is taken when a ground for removal of a  
21 member exists.

22       Sec. 51.211. STATE AGENCY CRIMINAL HISTORY PROCEDURES.

23       (a) The department may assist other state agencies in developing  
24 consistent procedures to obtain and use criminal history record  
25 information for licensing, regulatory, and related purposes.

26       (b) The department may provide funds to other state agencies  
27 to assist with developing and implementing the procedures described

1 under Subsection (a).

2 SECTION 4. Subchapter G, Chapter 51, Occupations Code, is  
3 amended by adding Section 51.3511 to read as follows:

4 Sec. 51.3511. SUBPOENAS. (a) The department may issue a  
5 subpoena as provided by this section.

6 (b) The department may request and, if necessary, compel by  
7 subpoena:

8 (1) the production for inspection and copying of  
9 records, documents, and other evidence relevant to the  
10 investigation of an alleged violation of this chapter, a law  
11 establishing a regulatory program administered by the department,  
12 or a rule adopted or order issued by the commission or executive  
13 director; and

14 (2) the attendance of a witness for examination under  
15 oath.

16 (c) A subpoena under this section may be issued throughout  
17 the state and may be served by any person designated by the  
18 commission or the executive director.

19 (d) The department, acting through the attorney general,  
20 may bring an action to enforce a subpoena issued under this section  
21 against a person who fails to comply with the subpoena.

22 (e) Venue for an action brought under this section is in a  
23 district court in:

24 (1) Travis County; or

25 (2) any county in which the department may hold a  
26 hearing.

27 (f) The court shall order compliance with the subpoena if

1 the court finds that good cause exists to issue the subpoena.

2 SECTION 5. Section 51.353, Occupations Code, is amended to  
3 read as follows:

4 Sec. 51.353. LICENSE DENIAL; ADMINISTRATIVE SANCTIONS.

5 (a) The commission shall revoke, suspend, deny an application for,  
6 or refuse to renew a license or shall reprimand a license holder for  
7 a violation of this chapter, a law establishing a regulatory  
8 program administered by the department, or a rule or order of the  
9 commission or the executive director.

10 (b) The commission may probate the suspension of a [~~place on~~  
11 ~~probation a person whose~~] license [~~is suspended~~]. If a license  
12 suspension is probated, the commission may require the person to:

13 (1) report regularly to the department on matters that  
14 are the basis of the probation;

15 (2) limit practice to the areas prescribed by the  
16 commission; or

17 (3) continue or renew professional education until the  
18 person attains a degree of skill satisfactory to the commission in  
19 those areas that are the basis for the probation.

20 SECTION 6. Subchapter G, Chapter 51, Occupations Code, is  
21 amended by adding Sections 51.355, 51.356, and 51.357 to read as  
22 follows:

23 Sec. 51.355. CEASE AND DESIST ORDERS. The executive  
24 director may issue a cease and desist order if the executive  
25 director determines that the action is necessary to prevent a  
26 violation of:

27 (1) this chapter;

1           (2) a law establishing a regulatory program  
2 administered by the department; or

3           (3) a rule adopted or order issued by the commission or  
4 the executive director.

5           Sec. 51.356. EMERGENCY ORDERS. (a) If the executive  
6 director determines that an emergency exists requiring immediate  
7 action to protect the public health and safety, the executive  
8 director may issue an emergency order to suspend or revoke a license  
9 or to halt operation of an unsafe facility or unsafe equipment that  
10 is subject to regulation by the department.

11           (b) The executive director may issue the emergency order  
12 with or without notice and hearing as the executive director  
13 considers practicable under the circumstances.

14           (c) If an emergency order is issued under this section  
15 without a hearing, the executive director shall set the time and  
16 place for a hearing conducted by the State Office of Administrative  
17 Hearings to affirm, modify, or set aside the emergency order not  
18 later than the 10th day after the date the order was issued. The  
19 order shall be affirmed to the extent that reasonable cause existed  
20 to issue the order.

21           (d) The commission by rule may prescribe procedures for the  
22 determination and appeal of an emergency order under this section,  
23 including a rule allowing the commission to affirm, modify, or set  
24 aside a decision made by the State Office of Administrative  
25 Hearings under Subsection (c).

26           (e) A proceeding under this section is a contested case  
27 under Chapter 2001, Government Code.

1       Sec. 51.357. DEFERRED ADJUDICATION; LICENSE SUSPENSION,  
2 LICENSE REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE.

3       (a) The commission may suspend, revoke, deny an application for,  
4 or refuse to renew a license if the commission determines that a  
5 deferred adjudication makes the person holding or seeking the  
6 license unfit for the license.

7       (b) In making a determination under Subsection (a), the  
8 commission shall consider the factors set forth in Sections 53.022  
9 and 53.023 and the guidelines issued by the department under  
10 Section 53.025.

11       SECTION 7. Subchapter H, Chapter 51, Occupations Code, is  
12 amended by adding Sections 51.407 and 51.408 to read as follows:

13       Sec. 51.407. TEMPORARY LICENSE. (a) The commission by  
14 rule may provide for the issuance of a temporary license to an  
15 applicant who:

16               (1) submits to the executive director an application  
17 on a form prescribed by the executive director;

18               (2) meets preliminary qualifications established by  
19 commission rule; and

20               (3) pays the required fees.

21       (b) A temporary license expires on the 21st day after the  
22 date of issuance and may not be renewed.

23       (c) A temporary license holder is subject to:

24               (1) this chapter;

25               (2) any law applicable to the activity for which the  
26 license is required; and

27               (3) any rule of the commission or the executive

1 director applicable to the license.

2 Sec. 51.408. EMERGENCY LICENSE. (a) The executive  
3 director may issue an emergency license to a person who meets  
4 eligibility requirements provided by:

5 (1) a law establishing a regulatory program  
6 administered by the department; or

7 (2) a rule adopted to implement this section.

8 (b) The license expires on the date indicated by the  
9 executive director, but not later than the 90th day after the date  
10 the license is issued.

11 (c) The emergency license holder may engage in the  
12 activities authorized by the type of license only:

13 (1) during a time declared as a state of disaster and  
14 the following recovery period; and

15 (2) in an area designated as a disaster area under  
16 Chapter 418, Government Code.

17 SECTION 8. This Act takes effect September 1, 2007.